Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

HELENE A. STEIGMAN and MARY D. ERWIN,
as personal representative of the
Estate of Elizabeth D. Droze,
Petitioners,

v.

DORIS DANESE, FLORIDA NATIONAL BANK, as co-personal representative of the Estate of Bernard L. Danese, ESTHER BAKER, as co-personal representative of the Estate of Bernard L. Danese, and BARBARA DANESE,
Respondents.

Petition for a Writ of Certiorari to the District Court of Appeal of Florida, First District

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a known or reasonably ascertainable creditor of a decedent's estate is provided the due process of law required by the Fourteenth Amendment where (a) the non-claim statute relied upon a bar to the creditor's claim against the estate does not provide, by its own terms, for the provision of actual notice to known or reasonably ascertainable creditors as required by this Court's opinions and (b) the creditor's only knowledge of the probate proceedings is obtained informally.

2. Whether this Court's opinions in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950) and *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988) authorize a state court to disregard the principal established by this Court in *Coe v. Armour Fertilizer Works*, 237 U.S. 413 (1915) and its progeny that a statute relied upon as the basis of a deprivation of property rights must, by its own terms, provide for the giving of notice complying with Fourteenth Amendment due process requirements so that informally obtained actual knowledge of a pending statutory deprivation of property rights is insufficient.

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No. ———

HELENE A. STEIGMAN and MARY D. ERWIN,
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PETITION FOR A WRIT OF CERTIORARI

The Petitioners, Helene A. Steigman and Mary D. Erwin, respectfully pray that a writ of certiorari issue to review the judgment and opinion of the District Court of Appeal of Florida, First District, entered in the above proceedings on July 29, 1994, with a denial of discretionary jurisdiction entered by the Florida Supreme Court on January 18, 1995.

OPINION BELOW

The opinion of the District Court of Appeal of Florida is reported at 641 So. 2d 423, and is reprinted in the appendix hereto, pp. 2a-9a, *infra.*

JURISDICTION

The judgment of the District Court of Appeal of Florida (pp. 2a-9a, *infra*), was entered on July 29, 1994 reversing the order of the Circuit Court, Fourth Judicial Circuit, in and for Duval County Florida dated March 23, 1993 granting Petitioners' Petition for Revocation of Orders of Discharge of Personal Representative to Conduct Further Administration of the Estate (pp. 30a-32a, *infra*). The District Court of Appeal denied Petitioners' timely Petition for Rehearing or, in the Alternative, Certification on September 15, 1994 (p. 33a, *infra*). Thereafter, on January 18, 1995 the Florida Supreme Court entered its Order denying discretionary review. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257 (a).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Const. amend. XIV, § 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Fla. Stat. § 733.702 (1983).

(1) No claim or demand against the decedent's estate that arose before the death of the decedent, including claims of the state and any of its subdivisions, whether due or not, direct or contingent, or liquidated or unliquidated; no claim for funeral or burial expenses; no claim for personal property in the possession of the personal representative; and no claim for damages, including, but not limited to, an action founded on fraud or

other wrongful act or omission of the decedent, shall be binding on the estate, on the personal representative, or on any beneficiary unless presented:

(a) Within 3 months from the time of the first publication of the notice of administration, even though the personal representative has recognized the claim or demand by paying a part of it or interest on it or otherwise. The personal representative may settle in full any claim without the necessity of the claim being filed when the settlement has been approved by the beneficiaries adversely affected according to the priorities provided in this code and when the settlement is made within the statutory time for filing claims; or he may file a proof of claim of all claims he has paid or intends to pay.

(b) Within 3 years after the decedent's death, if notice of administration has not been published.

(2) No cause of action heretofore or hereafter accruing, including, but not limited to, an action founded upon fraud or other wrongful act or omission, shall survive the death of the person against whom the claim may be made, whether an action is pending at the death of the person or not, unless the claim is filed in the manner provided in this part and within the time limited.

(3) Nothing in this section affects or prevents:

(a) A proceeding to enforce any mortgage, security interest, or other lien on property of the decedent.

(b) To the limits of casualty insurance protection only, any proceeding to establish liability of the decedent or the personal representative for which he is protected by the casualty insurance.

(c) The filing of a claim by the Department of Revenue subsequent to the expiration of 3 months from the publication of the notice of administration as provided in paragraph (1)(a), provided it does so file within 30 days after the filing of the inventory by the personal representative.

STATEMENT OF THE CASE

Petitioners seek review by this Court of an opinion of the District Court of Appeal of Florida, First District (the "Florida Court of Appeal") reversing an order entered by the Circuit Court, Fourth Judicial Circuit, in and for Duval County, Florida (the "Probate Court") reopening the estate of Bernard L. Danese (the "Estate") for further administration to allow Petitioners to continue prosecution of a civil action against the Estate.[1] *See* pp. 2a-9a, *infra.*

Publication of the first notice of administration of the Estate began on November 19, 1984. (R.6). On December 21, 1994, John Cattano, attorney for Petitioners, filed a civil action against the Estate. (PX-6). Petitioners alleged in their complaint that Bernard L. Danese fraudulently procured for himself and his brothers Petitioners' interest in certain real property located in Duval County, Florida. (PX-6). Service of process in the civil action was perfected upon Florida National Bank, as personal representative of the Estate, on January 2, 1985, which was within the three month non-claim period speci-

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[1] The record on appeal which was before the Florida Court of Appeal consisted of two separately paginated volumes. The first volume, numbered pages 1 through 57, consists of proceedings before the Probate Court through September 17, 1991. References to this volume of the record on appeal will be reflected by the letter "R" followed by the Clerk's page designation (R. ——). The second volume, numbered 1 through 158, consists of proceedings before the Probate Court and the Florida Court of Appeal from October 21, 1991 through May 7, 1993. References to this portion of the record on appeal will be referenced by the letter "F" followed by the Clerk's page designation (F. ——). There was also a transcript of an evidentiary hearing before the Probate Court held on April 19, 1991 which was included as part of the record on appeal under separate cover. References to pages of this transcript will be referenced by the letter "E" followed by the appropriate page of the transcript (E. ——), with refernces to the Petitioners' and Respondents' exhibits filed in evidence at the hearing reflected as "PX. ——" and "RX. ——," respectively.

fied by Florida Statutes, Section 733.702 (1983). (PX-10; E.49). On May 15, 1985, Petitioners filed a Notice of Civil Action in the Probate Court file. (R.7).

Prior to filing the civil action, Mr. Cattano wrote a letter to the Estate's sole beneficiary, Doris B. Danese. Mr. Cattano's letter, dated November 2, 1984, read as follows:

> Re: Distribution of Real Property in Estate—Bernard Danese.
>
> Dear Mrs. Danese:
>
> We represent Helene (McCall) Steigman regarding the distribution of your late husband's estate. Mrs. Steigman is particularly interested in the real property known as The Danese Homestead located in Mandarin. As I am sure you know, this property is the subject of various and questionable conveyances over the years. At this point, we are merely attempting to ascertain the potential distribution of this property from your husband's estate so that the various Danese family members can be fully apprised.
>
> At present, we are under the impression that no estate or any file whatsoever has been opened in the Probate Court of Duval County, Florida. We would appreciate it greatly if you could please contact me regarding this matter, or give this letter to your attorney for an appropriate informational response. I will be looking forward to hearing from you in the very near future.

(PX.4). Mr. Cattano's letter was forwarded by Doris B. Danese to counsel for the personal representative. (E.48). Upon receipt of Mr. Cattano's letter, counsel for the personal representative wrote a responsive letter dated November 15, 1984 which read as follows:

> Re: Estate of Bernard L. Danese.
>
> Dear John:
>
> We represent the Florida National Bank, as personal representative of the above estate. We have

> been forwarded your letter to Mrs. Danese, dated November 2, 1984, regarding the estate. We are unaware of any right that Mrs. Steigman may claim as beneficiary or otherwise.

(PX.5). After the personal representative was served with process in the civil action, counsel for the personal representative telephoned Mr. Cattano to discuss the litigation. (E.49-50).

Despite the pendency of the civil action, the Probate Court entered an order closing the Estate on January 23, 1986. (R.17). The Estate was briefly reopened for further administration due to the discovery of new assets on May 22, 1989 and closed again on September 21, 1989. (R.21, 28). The attorneys for the personal representative did not make the Probate Court aware of the pendency of the civil action in seeking either order closing the Estate. (R.48; p. 28a, *infra*). Thus, neither Petitioners nor their attorneys received notice of either petition to close the Estate or of the further administration of the Estate. (R.48; p. 28a, *infra*).

On December 15, 1990, Petitioners filed a petition to reopen the Estate based upon the pendency of the civil action. (R.29). The Probate Court entered an order reopening the Estate, holding that the pending civil action represented an incomplete aspect of the administration of the Estate. (R.49; pp. 28a-29a, *infra*). The Estate appealed the Probate Court's order. (R.50). While that appeal was pending, the Florida Supreme Court, in *Spohr v. Berryman*, 589 So. 2d 225 (Fla. 1991), held that the institution of a civil action does not constitute the filing of a claim in an estate as contemplated by the Florida non-claim statute, Florida Statutes, Section 733.702. In so holding, the Florida Supreme Court disapproved *Steigman v. Danese*, 502 So. 2d 463 (Fla. Dist. Ct. App. 1987) (pp. 10a-24a, *infra*), wherein the Florida Court of Appeal previously held that Petitioners' filing of the civil action amounted to a timely

filed claim in compliance with Section 733.702 (1983). *Spohr*, 589 So. 2d at 229. On the authority of *Spohr*, the Florida Court of Appeal vacated the Probate Court's order reopening the Estate and remanded for reconsideration in light of *Spohr*. *In re Estate of Danese*, 601 So. 2d 570, 571 (Fla. Dist. Ct. App. 1992) (pp. 25a-26a, *infra*).

On September 28, 1992, the Estate filed its Motion for Entry of Order Pursuant to Mandate of First District Court of Appeal requesting that the Probate Court apply *Spohr* and deny Petitioners' motion to reopen the Estate. (F.7). The Probate Court denied the Estate's motion and entered a second order granting Petitioners' motion to reopen the Estate. (F.149; pp. 30a-32a, *infra*). The Probate Court based its ruling on *Thames v. Jackson*, 598 So. 2d 121 (Fla. Dist. Ct. App. 1992), wherein the Florida Court of Appeal held that Florida Statutes, Section 733.702 (1985) [2] violated the due process clause of the Fourteenth Amendment due to its failure to provide for the giving of actual notice to known or reasonably ascertainable creditors. *Thames*, 598 So. 2d at 124-125. Specifically, the Probate Court held that:

> In *Thames*, the First District Court of Appeal held that the version of Florida Statutes, Section 733.702, applicable under the facts of the instant case violated due process of law. *Id.* at 125. The *Thames* holding was in conformity with the holding of the United States Supreme Court in *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478 (1988). Thus, the version of Section 733.702, which Respondents assert as a bar to Petitioners' status as claimants in the estate is unconstitutional and "cannot, standing alone, operate as a bar to appellant's claim." *Thames*, 598 So. 2d at 125.

(F.149-150; pp. 30a-31a, *infra*).

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[2] The pertinent portions of the 1983 version of Section 733.702 applicable under the facts of the instant case are identical to the 1985 version.

The Estate then appealed from this second order of the Probate Court reopening the Estate. (F.152). The Florida Court of Appeal held that the Probate Court erred in granting Petitioners' motion to reopen the Estate. *See* pp. 2a-9a, *infra*. In so holding, the Florida Court of Appeal reasoned that it did not violate due process to apply Section 733.702 (1983) to bar Petitioners' claim against the Estate since, even if Petitioners were known or reasonably ascertainable creditors, Petitioners had actual knowledge of the opening of the Estate. *See* pp. 6a-9a, *infra*. The court stated:

> [T]he United States Supreme Court reiterated in [*Tulsa Professional Collection Services v. Pope*, 485 U.S. 478 (1988)] what the Court had stated in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), which was that "whether a particular method of notice is reasonable depends on the particular circumstances." . . . [W]e are not persuaded that the *Pope* court would have been sympathetic to appellees in the present case. Although appellees had actual knowledge of the opening of the estate at the time of its opening, appellees did not file a claim in the estate. Instead, appellees filed and served a civil complaint naming the estate within the three-month nonclaim period. . . . [A]ctual knowledge of the information necessary to file a claim satisfies due process requirements.

See pp. 6a-8a, *infra*. Petitioners timely filed a Motion for Rehearing or, in the Alternative, Certification wherein Petitioners argued that the Florida Court of Appeal overlooked or misconstrued controlling opinions of this Court establishing that informal or extra-official notice, not provided by the terms of the statute in question, was insufficient to support a statutory deprivation of property rights. (A.12). The 1983 version of Section 733.702, unlike the current version, did not provide by its own terms for notice, other than publication notice, to known or reasonably ascertainable creditors. Fla. Stat. § 733.702

(1983). The Florida Court of Appeal denied this motion. *See* p. 33a, *infra*. Petitioners thereafter filed their notice to invoke the discretionary jurisdiction of the Florida Supreme Court on October 14, 1994. The Florida Supreme Court denied without opinion to exercise its discretionary jurisdiction to review the opinion of the Florida Court of Appeal by order dated January 18, 1995. *See* p. 1a, *infra*.

REASONS FOR GRANTING THE WRIT

The Florida Court of Appeal has disregarded this Court's unequivocal holdings that informally obtained notice of the pendency of a statutorily authorized property right deprivation, not required to be given by the terms of the statute, does not satisfy Fourteenth Amendment due process requirements. The consequences of this erosion of due process protections reach far beyond the immediate and significant injustice to Petitioners resulting from the erroneous application of Florida Statutes, Section 733.702 (1983) to bar their claim against the Estate. Other probate claimants are certain to be injuriously affected. Furthermore, because the Florida Court of Appeal did not explicitly limit its reasoning to Section 733.702, its opinion stands as authority for the proposition that informally obtained knowledge of the pendency of any statutory deprivation of property rights satisfies due process requirements, regardless of the source of that knowledge. The contexts in which the court's opinion will cause erroneous property right deprivations thus are limitless absent reversal by this Court. Compounding the necessity of plenary review by this Court is the Florida Court of Appeal's misconstruction and misapplication of this Court's opinions in *Mullane v. Central Hanover Bank and Trust Company*, 339 U.S. 306 (1949) and *Tulsa Professional Collection Services v. Pope*, 485 U.S. 478 (1988), as authority for its holding.

I. THE FLORIDA COURT OF APPEAL'S HOLDING THAT PETITIONERS WERE AFFORDED SUFFICIENT DUE PROCESS OF LAW BY VIRTUE OF THEIR ACTUAL KNOWLEDGE OF THE OPENING OF THE ESTATE CONFLICTS WITH DECISIONS OF THIS COURT AS WELL AS WITH DECISIONS OF NUMEROUS FEDERAL CIRCUIT COURTS OF APPEALS, FEDERAL DISTRICT COURTS AND STATE COURTS OF LAST RESORT.

There is no question that Florida Statutes, Section 733.702 (1983) did not provide for the giving of actual notice, by mail or otherwise, to known or otherwise ascertainable creditors [3] as required by this Court's opinion in *Tulsa Professional Collection Services v. Pope*, 485 U.S. 478 (1988). Nonetheless, the Florida Court of Appeal held that Section 733.702 could be applied constitutionally to bar Petitioners' claim against the Estate because:

> [T]he Florida Supreme Court, in enacting Rule 5.495 [4], and this court in *Thames*, implicitly recognized that actual knowledge of the information necessary to timely file a claim satisfies due process re-

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[3] An additional argument made by Respondents before the Florida Court of Appeal was that Petitioners were not known or reasonably ascertainable creditors. As a result of its ruling on the effect of Petitioners' knowledge of the opening of the Estate, the Florida Court of Appeal never reached this issue. *See* pp. 6a-9a, *infra*.

[4] Florida Rules of Probate Procedure, Rule 5.495, effective January 1, 1989, was promulgated by the Florida Supreme Court in response to this Court's decision in *Pope* and provided for an extension of time in which to file a claim for a creditor who was known to the personal representative, but was not served with a copy of the notice of administration. *See* p. 7a n.1, *infra*. Rule 5.495 was repealed effective October 1, 1991, in view of an amendment to Section 733.702 providing for an extension of time to file a claim. *Id.* Rule 5.495 required that the creditor seeking an extension of time make a verified statement that the creditor did not have actual knowledge of those matters required to be set forth in the notice of administration during the period allowed for filing claims. *Id.*

> quirements. It is undisputed that [Petitioners] in the instant case had actual knowledge of the opening of the estate.

See pp. 8a-9a, *infra*. The Florida Court of Appeal so held despite Petitioners' insistence in their Answer Brief, at oral argument and on motion for rehearing that controlling opinions of this Court, including *Coe v. Armour Fertilizer Works*, 237 U.S. 413 (1915), establish that Petitioners' actual knowledge of the opening of the Estate can not cure the fatal due process defect resulting from the failure of Section 733.702 (1983) to require the giving of actual notice to known or reasonably ascertainable creditors.

In *Coe*, this Court held violative of Fourteenth Amendment due process guarantees a Florida statute that provided for execution against a stockholder of a debtor corporation without notice. *Id.* at 422-23. In reaching this holding, the Court noted that the argument had been made that:

> [P]laintiff in error is not within that class [which may justly complain]; he in fact learned of the execution before his property was sold or even his possession was disturbed, and he had an opportunity for a hearing in the present proceeding as to all questions upon which his liability depended.

Id. at 424. In rejecting this argument, this Court stated the rule as follows:

> Nor can extra-official or casual notice . . . be deemed a substantial substitute for the due process of law that the Constitution requires. . . . "[I]t is not enough that [one who is the subject of an imminent property right deprivation] may by chance have notice, or that they may as a matter of favor have a hearing. The law must require notice to them . . ." The soundness of this doctrine has repeatedly been recognized by this Court. . . . "[I]f the statute did not provide for notice in any form, it is not material

> that as a matter of grace or favor notice may have been given of the [pending property deprivation]. It is not what notice, uncalled for by the statute, [that was] received in a particular case that is material, but the question is whether any notice is provided for by the statute". . . . "[T]his notice must be provided as an essential part of the statutory provision, and not awarded as a mere matter of favor or grace." . . . "[T]he right of a citizen to due process of law must rest upon a basis more substantial than favor or discretion." . . . "[T]he law itself must save the parties' rights . . . ."

Id. at 424-25. This Court subsequently reaffirmed this bedrock principal of Fourteenth Amendment jurisprudence in *Wuchter v. Pizzutti*, 276 U.S. 13 (1928), wherein this Court held that notice received other than under the terms of the statute in question "[n]ot having been directed by the statute . . . can not . . . supply constitutional validity to the statute or to service under it." *Id.* at 24 (citing *Coe v. Armour Fertilizer Works*, 237 U.S. 413, 424-25 (1915), and other opinions of this Court).

That *Coe, Wuchter* and the other opinions of this Court upon which they rely are controlling precedent is confirmed by the fact that this Court has never explicitly overruled, retreated from, or even questioned the relevant portions of these holdings. The binding nature of these opinions is acknowledged by numerous opinions of federal courts of appeals and district courts which cite them as authority for the principal that actual knowledge cannot cure the failure of a statute to require constitutionally sufficient notice. *See, e.g., Sterling v. Environmental Control Board of the City of New York*, 793 F.2d 52, 58 n.4. (2nd Cir. 1986), *cert. denied*, 479 U.S. 987 (1986); *Rose v. K.K. Masutoku Toy Factory Co.*, 597 F.2d 215, 219 (10th Cir. 1979); *Goldlawr, Inc. v. Heiman*, 288 F.2d 579, 582 (2nd Cir. 1961), *rev'd on other grounds*, 369 U.S. 463 (1962); *Baker v. Latham*

Sparrowbush Associates, 808 F. Supp. 981, 888 (S.D.N.Y. 1992); *North Carolina Electric Membership Corporation v. White*, 722 F. Supp. 1314, 1328 n.17 (D.S.C. 1989); *Michelson v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 709 F. Supp. 1279, 1282 (S.D.N.Y. 1989); *Fry's Food Stores of Arizona, Inc. v. CBM of Arizona, Inc.*, 636 F. Supp. 168, 171 (D. Ariz. 1986); *Leab v. Streit*, 584 F. Supp. 748, 758 n.11 (S.D.N.Y. 1984); *Katz v. Ke Nam Kim*, 379 F. Supp. 65, 67 (D. Haw. 1974).

Likewise, numerous state courts recognize the principle established by *Coe* and its progeny that application of a statute which does not provide for constitutionally sufficient notice is not rendered constitutional simply because one learns of the proceedings in some other way. *See, e.g., Pulaski County v. Commercial National Bank*, 194 S.W.2d 883, 886-888 (Ark. 1946); *Cugat v. Cugat*, 228 P.2d 31, 32 (Cal. Dist. Ct. App. 1951); *Merco Construction Engineers, Inc. v. Los Angeles Unified School District of Los Angeles County*, 79 Cal. Rptr. 23, 31-32 (Cal. Dist. Ct. App. 1969); *Watkins v. Dodson*, 68 N.W.2d 508, 513 (Neb. 1955); *Farnow v. Department 1 of Eighth Judicial District Court in and for Clark County*, 178 P.2d 371 (Nev. 1947); *Morris v. Morris*, 759 S.W.2d 707, 710 (Tex. App. 1988).

There is conflict between the opinion of the Florida Court of Appeal and the overwhelming weight of authority set forth above that extra-official notice not required by the terms of a statute is insufficient. This conflict is both direct and irreconcilable. No factual difference between the instant case and *Coe* and its progeny can be discerned which explains the Florida Court of Appeal's failure to declare Petitioners' actual knowledge insufficient to render application of Section 733.702 (1983) to bar Petitioners' claim against the Estate constitutional. Rather than attempt the impossible task of distinguishing *Coe* and its progeny, which was the center

piece of Petitioners' argument on the merits and on motion for rehearing, the Florida Court of Appeal's opinion simply fails to acknowledge the existence of this binding authority.

The immediate effect of this error on Petitioners is the loss of their right to pursue against the Estate their claim that they were defrauded by the deceased into conveying to the deceased and his brothers their interest in a parcel of real property with a significant market value. However, the mischief resulting from the Florida Court of Appeal's opinion will not be limited to the destruction of the Petitioners' claim against the Estate. The same issue undoubtedly will arise as to other claimants to whom the 1983 version of Section 733.702 is potentially applicable. Indeed, all of the trial courts in Florida are bound to follow the Florida Court of Appeal's opinion. *Chapman v. Pinellas County*, 423 So. 2d 378 (Fla. Dist. Ct. App. 1982). As a result of this opinion, trial courts throughout Florida will face the dilemma of conforming to the erroneous holding of the Florida Court of Appeal at the price of disregarding this Court's precedents.

Further, the Florida Court of Appeal's opinion threatens to contaminate the entire body of case law concerning statutory property right deprivation. The Florida Court of Appeal did not explicitly limit its reasoning to the facts of the case before the court. If informal knowledge, rather than statutorily required actual notice, of an imminent barring of a claim against a probate estate is sufficient for due process purposes, there is no reason why such informally obtained knowledge would not suffice whenever any property is taken on the authority of law.

No court outside of Florida has yet to cite the instant opinion as authority for the proposition that a statute need not require constitutionally sufficient notice by its own terms where there is actual knowledge of the pend-

ing property right deprivation. However, at least one state court, one federal court of appeals and one district court have independently reached such an erroneous holding. *See Wiren v. Eide*, 542 F.2d 757, 762 (9th Cir. 1976); *Bowlin v. Deschutes County*, 712 F. Supp. 803, 807 (D. Or. 1988), *aff'd*, 918 F.2d 181 (9th Cir. 1990); *In re Estate of Sutherland*, 593 N.E.2d 955, 960-61 (Ill. App. Ct. 1992).[5] The instant opinion will provide additional authority for other courts to depart from this Court's holdings. No purpose can be served by allowing further confusion to develop as a result of the Florida Court of Appeal's opinion. Thus, it is critical that this Court grant plenary review of the instant case to arrest any further erosion of the fundamental due process protections declared in *Coe* and its progeny.

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[5] Both *Wiren* and *Bowlin* are based upon the assumption that this Court's opinion in *United States v. Raines*, 362 U.S. 17 (1960) represented an implicit abrogation of *Coe* and its progeny. These courts base this assumption upon a misinterpretation of the *Raines* Court's statement that "[o]ne to whom application of a statute is constitutional will not be heard to attack the statute on the ground that it might also be taken as applying to other persons or other siuations in which its application might be unconstitutional." *Id.* at 21. This is merely a reiteration of the general rule against third party standing as to constitutional issues, which principal predates both *Raines* and *Coe*. Indeed, the *Coe* Court clearly was cognizant of the general rule that one may not assert that a statute is unconstitutional as applied to someone else when the Court rejected the argument that the plaintiff in error was not "within the class who may justly complain" because he had actual knowledge of the pending property deprivation. *Coe*, 237 U.S. at 423-24.

II. THE FLORIDA COURT OF APPEAL MISINTERPRETED AND MISAPPLIED THIS COURT'S OPINIONS IN *TULSA PROFESSIONAL COLLECTION SERVICES v. POPE*, 485 U.S. 478 (1988) AND *MULLANE v. CENTRAL HANOVER BANK & TRUST CO.*, 339 U.S. 306 (1950) IN HOLDING THAT PETITIONERS' ACTUAL KNOWLEDGE OF THE OPENING OF THE ESTATE SATISFIES DUE PROCESS REQUIREMENTS.

In support of its holding that Petitioners' actual knowledge of the pendency of probate proceedings satisfies Fourteenth Amendment due process requirements, the Florida Court of Appeal said:

> [T]he United States Supreme Court reiterated in *Pope* what the Court had stated in *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1950), which was that "whether a particular method of notice is reasonable depends on the particular circumstances." . . . [W]e are not persuaded that the *Pope* court would have been sympathetic to the appellees in the instant case. Although appellees had actual knowledge of the opening of the estate at the time of its opening, appellees did not file a claim in the estate. Instead, appellees filed and served a civil complaint naming the estate within the three month non-claim period.

See pp. 6a-7a, *infra*.

Thus, even though Section 733.702 (1983) did not require constitutionally sufficient notice by its own terms, the Florida Court of Appeal cited *Mullane* and *Pope* as authority for the proposition that due process requirements can be satisfied by actual knowledge. In so holding, the court failed to recognize that both *Mullane* and *Pope* deal exclusively with the question of what sort of notice is required to be given by the terms of a statute.[6]

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[6] A related issue argued in Petitioners' Answer Brief before the Florida Court of Appeal was whether *Mullane* renders all mail notice constitutionally sufficient, or whether additional inquiry

Neither case addressed explicitly or implicitly the further question of whether informally obtained notice not required to be provided by the terms of a statute can serve as a substitute for statutorily mandated notice. The Florida Court of Appeal's construction of *Mullane* and *Pope* results in the implicit abrogation of *Coe* and its progeny. There is no support within the opinions of this Court for such a result. Indeed, *Mullane* and *Coe* are entirely compatible and complementary holdings, each addressing a distinct aspect of Fourteenth Amendment notice requirements. *Mullane* establishes the method of notice required. *Coe* requires that whatever notice is sufficient under *Mullane* be required by the very terms of the statute. *See, e.g., Sterling v. Environmental Control Board of the City of New York*, 793 F.2d 52, 56-58 and n.4 (2nd Cir. 1986) (finding that notice required under ordinance as to violation of New York City's sanitation code insufficient under *Mullane* and further finding that this due process violation was not cured by extra-statutory notice measures) (citing *Wuchter v. Pizzutti*, 276 U.S. 13 (1928)).

The Florida Court of Appeal's misconstruction and misapplication of *Mullane* and *Pope* compounds the detrimental effect that its opinion will have on Fourteenth Amendment due process jurisprudence. By holding that this Court's precedents support its holding, the Florida Court of Appeal has multiplied the probability that its holding will form the basis of similarly erroneous holdings within Florida and throughout the Nation. Plenary consideration of this case by the Court therefore is essential.

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must be had as to the informational content of the mailed notice. The Florida Court of Appeal did not explicitly address this issue in their opinion. Petitioners request the right to raise this issue to the extent permitted by the Court should plenary review be granted.

CONCLUSION

For the foregoing reasons, Petitioners respectfully request that the Court grant this petition for certiorari.

Respectfully submitted,

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